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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/952,475	03/09/98	MORIMATSU	F 2520-109P

IM32/1117
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CORBIN, A

1761

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:
11/17/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/954,415

Applicant(s)

MORIMATSU ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 10-8-99, 10-4-99.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 2-7 & 10-17 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 2-7 & 10-17 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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(1) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(2) Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 contains improper Markush language ~~is~~ failing to recite "selected from the group consisting of" after "are" (line 3). Correction is required.

(3) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(4) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(5) Claims 3-12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Giese.

Applicant is referred to paragraph no. 7, Paper No. 5.

(6) Claims 2, 13, 14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giese.

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Finding the optimum amount^{and ratio} of vegetable oil, animal fat and soybean protein to be included in the meat products would require nothing more than routine experimentation by one reasonably skilled in this art.

(7) Claims⁵ 6, 7/5, 7/6, 7/11, 10/12, 11,12 and 15 are also rejected under 35 U.S.C. 102(b) as being anticipated by Bonkowski.

Applicant is referred to paragraph no. 8, Paper No. 5.

(8) Claims 2-4, 7/2-7/4, 10/13 and 13 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Bonkowski in view of Helmer et al.

Applicant is referred to the reasoning in paragraph no. 9, Paper No. 5. Also, see the last sentence in paragraph no. 6 above.

(9) Claims 14, 16 and 17 are^{also} rejected under 35 U.S.C. 103(a) as being unpatentable over Bonkowski. See the last sentence in paragraph no. 6 above.

(10) Applicant's arguments filed October 4, 1999 have been fully considered but they are not persuasive. The use of polyunsaturated fat in Giese is not only disclosed at page 105, col. 3, as applicant believes, but also on page 100, col. 2 and page 103, col. 3, wherein it is disclosed that polyunsaturated fats lower plasma cholesterol (page 100) and that soybean oil (a polyunsaturated fat) is partially substituted for beef fat in low fat ground meat products (page 103). In this regard applicant is also referred to table 1 of Giese when isolated soy protein is added to low fat ground meat products to lower plasma cholesterol.

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Further, applicant's confusion, regarding the use of low fat ground meat products in Giese having less than half of the fat present in conventional meat products, is resolved by reference to page 100, col. 3, wherein low fat meat is defined as having 3 grams or less of fat per 100 grams of product, and Table 1 wherein the low fat content is 10%.

Applicant's contention that Bonkowski fails to describe meat products possessing plasma cholesterol-suppressing properties is without merit since the title of this patent includes "Low Cholesterol", and col. 1, line 61 to col. 2, line 3 discloses reducing cholesterol in meat. Why are these disclosures insufficient to anticipate "plasma-cholesterol - suppressing properties", as applicant concludes?

Finally, the suggestion of substituting vegetable oil for animal fat in ground meat products is found in the disclosure of Helmer since the addition of soy oil therein will lower the saturated fat content.

(11) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


(12) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Monday-Friday from 9:30 A.M. to 6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703) 308-3535. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/vr

11-16-99



ARTHUR L. CORBIN
PRIMARY EXAMINER
11-16-99